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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 798

UNITED STATES OF AMERICA AND COMMISSIONER OF INTERNAL REVENUE, PETITIONERS

v.

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET AL.[1]

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals in *Mitchell and Sims*[2] v. *Commissioner* (R. 73–82)[3] is reported at 430 F.

[1] These cases are combined in this brief, as they were in the petition, pursuant to Rule 23(5).

[2] Jane Isabell Goyne Sims is a party to this litigation only because she was a transferee without consideration of property previously owned by Mrs. Mitchell. On uncontroverted facts, the Tax Court determined (R. 64–66) that Mrs. Sims was liable for the taxes assessed against Mrs. Mitchell under the transferee liability provision of the Internal Revenue Code of 1954 (Section 6901). There is, we think, no real dispute now as to this determination, and a finding by this Court against Mrs. Mitchell would be binding against Mrs. Sims.

[3] "R." references are to the separately bound record appendix.

2d 1. The findings of fact and opinion of the Tax Court (R. 51–66) are reported at 51 T.C. 641.

The opinion of the court of appeals in *Angello* v. *Metropolitan Life Ins. Co. and United States* (R. 125–128) is reported at 430 F. 2d 7. The findings of fact and conclusions of law of the district court (R. 120–122) are not reported.

JURISDICTION

In *Mitchell* the judgment of the court of appeals (R. 83) was entered on June 23, 1970. In *Angello* the judgment of the court of appeals (R. 129) was entered on June 22, 1970. By order dated September 17, 1970, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including October 5, 1970. The petition was filed on October 2, 1970, and certiorari was granted on January 18, 1971. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a married woman domiciled in the community property state of Louisiana is personally liable for federal income taxes on her vested one-half interest in community income realized during the existence of the community, if she subsequently renounces her community rights or fails expressly to accept them.

STATUTES INVOLVED

The pertinent provisions of the Internal Revenue Code of 1954 (the "Code") and the Louisiana Civil Code are set forth in the Appendix, *infra*, pp. 25–26.

STATEMENT

1. MITCHELL

During the tax years in question, 1955 through 1959, Mrs. Mitchell resided with her husband in, and under the community property laws of, Louisiana. All income realized by both spouses in these years was community income. Mrs. Mitchell's personal earnings during this period totalled about $4,200, from which income taxes were withheld and credited against the deficiency subsequently assessed against her and her husband.

Mrs. Mitchell was unaware of her husband's finances or how much money he made during this time. She rarely knew the balance in the couple's joint bank account; nevertheless, she had withdrawal privileges on the account and from time to time withdrew community funds from it. Mr. Mitchell, however, was in charge of the couple's financial affairs and did not usually consult with his wife on such matters. (R. 15, 35, 42, 45, 53–54.)

Neither Mrs. Mitchell nor her husband filed federal income tax returns for any of the five years in issue. Mrs. Mitchell knew of her husband's fiscal irresponsibility and repeatedly questioned him each year about the preparation of income tax returns. At no time did she participate in the preparation or filing of any return. Instead, she relied on her husband's assurances that he was filing timely returns and paying the taxes due, and assumed that he signed her name to the returns. In July of 1960, she learned that no returns had in fact been filed. (R. 15, 34–36, 41–42, 46, 54.)

Mrs. Mitchell separated from her husband in that same month. In August of 1961 she filed suit against Mr. Mit-

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chell requesting a separation from bed and board and that she be allowed to accept the community of acquets and gains with benefit of inventory in accordance with Louisiana law. On September 14, 1961, Mrs. Mitchell was judicially separated from her husband, and a final decree of divorce was ordered on October 11, 1962. She formally renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code by instrument dated September 18, 1961, and received neither a distribution of community property nor a property settlement upon dissolution of the marriage. (R. 15, 49–50, 54–55.)

The Commissioner determined deficiencies in income taxes and penalties against Mrs. Mitchell for one-half of the community income for 1955 through 1959, and sought to collect the deficiencies from certain separate property which Mrs. Mitchell inherited from her mother and then transferred, without consideration, to her sister (see note 2, *supra*). Mrs. Mitchell sought a redetermination of the deficiencies in the Tax Court (R. 6–10). That court held that under Louisana community property law Mrs. Mitchell had an immediate vested ownership interest in one-half of all community income when and as earned, by either spouse, and was personally responsible for the federal income tax on her share. As to the renunciation under Article 2410, it ruled that the pre-existing federal tax liability arising by virtue of Mrs. Mitchell's ownership of her share of the community income was not affected by this later act undertaken in accordance with state law. (R. 51–66.) On appeal, the Fifth Circuit reversed, with one judge dissenting, holding that by her renunciation of the

community Mrs. Mitchell avoided any federal tax liability on the community income (R. 73–82).

2. ANGELLO

During the tax years in question, 1959 through 1961, Mrs. Angello resided with her then husband, Jack Sparacio, also in, and under the community property laws of, Louisiana. Although they realized community income in each of these years, neither Mrs. Angello nor her husband filed income tax returns for any of the years. (R. 104–105, 109, 120–121.)

The District Director of Internal Revenue made assessments against them for federal income tax liabilities for the three years involved. The United States then filed a notice of federal tax lien with the Recorder of Mortgages, Parish of New Orleans, and addressed a notice of levy to the Metropolitan Life Insurance Company, which had issued a life insurance policy to Mr. Sparacio. Upon Mr. Sparacio's death, the notice of levy attached to the proceeds of the policy. Mrs. Angello, who was the beneficiary of the policy, filed suit in state court against Metropolitan to recover the proceeds, and the United States intervened to assert its lien. Upon its motion, the case was removed to the federal district court. After removal, Metropolitan paid the proceeds into the court registry and was dismissed from the case. (R. 88–89, 106–107, 120–121.)

The district court granted the government's motion for summary judgment. It held Mrs. Angello liable for federal income taxes on her one-half of the community income for 1959 through 1961, and ordered collection of

the taxes from the interpleaded funds, which it concluded were Mrs. Angello's separate property under Louisiana law. On appeal, the Fifth Circuit reversed, with one dissent, relying on the decision of the same panel in *Mitchell* (R. 125–128).[4]

SUMMARY OF ARGUMENT

Section 1(a) of the Code imposes a tax on the income "of every individual." Although the Code does not specify what is included in this phrase, this Court supplied a definition in *Poe* v. *Seaborn*, 282 U.S. 101, and held that income is taxed to its owner. Ownership, in turn, is determined by reference to state law.

Under Louisiana law, marriage constitutes a partnership between the spouses, in which each spouse owns an equal share. All income realized during the marriage is community income, and each spouse owns a one-half share of such income at the very instant it is earned. Management of the marital partnership is entrusted to the husband. In recognition of this fact, the wife's separate property ordinarily is exempt from community debts. But neither feature of the Louisiana property system impairs the wife's ownership rights.

Federal law controls what state-created interests shall be taxed and, as *Seaborn* holds, taxes income to its

[4] Although no formal statutory renunciation occurred in *Angello*, as in *Mitchell*, the court of appeals stated there was no evidence to indicate that Mrs. Angello expressly accepted the benefits or liabilities of the community upon its dissolution, and treated the case as presenting the same issue as, and thus controlled by the court's ruling in, *Mitchell*. The dissenting judge accepted this characterization. (R. 127.)

owner. In *Bender* v. *Pfaff*, 282 U.S. 127, this Court confirmed that a Louisiana wife "owns" and thus is taxed on her share of income, even though state law delegates management powers to the husband and exempts the wife from personal liability for community debts. And in *United States* v. *Malcolm*, 282 U.S. 792, the Court made it clear that the wife not only is entitled to report separately her income share, but *should* do so.

In the instant cases, the Fifth Circuit held that *Seaborn*, *Pfaff* and *Malcolm* merely entitle, but do not require, the wife to return her share of community income. If she does not assume liability for the community debts, by express agreement or by accepting the benefits of the community on its dissolution, then she is not personally liable for those debts, including the federal tax obligation with respect to her share of the community income.

The holdings below are bottomed on the provisions of Louisiana law which exonerate the wife from individual liability for community claims. But state exemption statutes have no bearing on the collection of the federal income tax. The Code provides that the tax levied against an individual may be collected from any property belonging to that individual irrespective of state exemption laws as to such property. The federal statute expressly recognizes certain properties as exempt, but the wife's separate property is not among these and may therefore be taken in satisfaction of her individual liability for the taxes on her community income share.

ARGUMENT

RESPONDENTS ARE PERSONALLY LIABLE FOR FEDERAL INCOME TAX ON THEIR ONE-HALF INTEREST IN COMMUNITY INCOME REALIZED DURING THE EXISTENCE OF THE COMMUNITY

1. INTRODUCTION

Since its earliest days, the federal income tax has been levied against the taxable income "of every individual." Section 1(a) of the Code (Appendix, *infra*, p. 25).[5] The Code does not, however, specify what is included in this phrase and furnishes no other standard or definition of what constitutes an individual's income.

In *Poe* v. *Seaborn*, 282 U.S. 101, this Court resolved the problem in the context of community property. See also *Bender* v. *Pfaff*, 282 U.S. 127, involving community property in Louisiana. It held that "use of the word 'of' denotes ownership" (282 U.S. at 109), and thus established that, under the federal taxing scheme, income is taxed to its owner. Accord, *Blair* v. *Commissioner*, 300 U.S. 127–131. In its *Seaborn* opinion, the

[5] The quoted phrase first appeared in Sections 1 and 201 of the Revenue Act of 1917, c. 63, 40 Stat. 300, 303. It has since been employed in every successor enactment. See Sections 210 and 211, Revenue Act of 1918, c. 18, 40 Stat. 1057, 1062; Sections 210 and 211, Revenue Act of 1921, c. 136, 42 Stat. 227, 233; Act of March 4, 1923 (amending Section 210 of the Revenue Act of 1921), c. 280, 42 Stat. 1507; Sections 210 and 211, Revenue Act of 1924, c. 234, 43 Stat. 253, 264, 265; Sections 210 and 211, Revenue Act of 1926, c. 27, 44 Stat. 9, 21, 22; Section 11, Revenue Act of 1928, c. 852, 45 Stat. 791, 795, 796; Sections 11 and 12, Revenue Act of 1932, c. 209, 47 Stat. 169, 174; Sections 11 and 12, Revenue Act of 1934, c. 277, 48 Stat. 680, 684; Sections 11 and 12, Revenue Act of 1936, c. 690, 49 Stat. 1648, 1653; Sections 11 and 12, Revenue Act of 1938, c. 289, 52 Stat. 447, 452–453; Sections 11 and 12, Internal Revenue Code of 1939.

Court admonished (282 U.S. at 110) that the proper focus in determining the question of ownership is state law, and the rights and legal interests that law creates, but that once that matter is determined, federal law controls the imposition of the tax.[6] It is within this framework, and within the further standard that the law "is to be interpreted so as to give a uniform application to a nationwide scheme of taxation" (*Burnet* v. *Harmel*, 287 U.S. 103, 110), that we consider whether a wife residing in Louisiana—a community property state—is, under applicable state law, the "owner" of, and thus taxable on, her one-half share of community income, and, if so, whether the tax on that share may be collected from her separate property.

2. UNDER LOUISIANA LAW, THE WIFE OWNS ONE-HALF OF ALL COMMUNITY INCOME AS AND WHEN IT IS EARNED

By the law of Louisiana, every marital status subject to that law "superinduces of right [a] partnership or community" of the spouses with respect to property acquired during the existence of the community. Article 2399, Louisiana Civil Code (Appendix, *infra*, p. 26).[7]

[6] See *Commissioner* v. *Estate of Bosch*, 387 U.S. 456; *Morgan* v. *Commissioner*, 309 U.S. 78, 80–81. See also *United States* v. *Stapf*, 375 U.S. 118; *Helvering* v. *Stuart*, 317 U.S. 154; *Warburton* v. *White*, 176 U.S. 484.

[7] See *Fernandez* v. *Wiener*, 326 U.S. 340; *Bender* v. *Pfaff*, 282 U.S. 127. The community property system of Louisiana and the seven other community property states (Arizona, California, Idaho, Nevada, New Mexico, Texas, and Washington) is based on the Spanish system, which also views the community of property as being in the nature of a partnership between the spouses. See 1 de Funiak, *Principles of Community Property* 70–71, 263–264 (1943) (hereinafter *de Funiak*).

The community thus created, according to the Supreme Court of Louisiana, "is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired * * *." *Succession of Wiener,* 203 La. 649, 657, 14 So. 2d 475, 477.[8] In this system, husband and wife are viewed as having each contributed equal effort in the acquisition of all marital property, including income. In recognition of this fact, each has an equal and presently vested ownership right in all the marital property. *United States Fidelity & Guaranty Co.* v. *Green,* 252 La. 227, 210 So. 2d 328; *Azar* v. *Azar,* 239 La. 941, 120 So. 2d 485; *Phillips* v. *Phillips,* 160 La. 813, 107 So. 584; *Dixon* v. *Dixon's Executors,* 4 La. (Old Series) 188. And it makes no difference which spouse actually provides the capital or performs the services giving rise to an acquisition. The essential concept is that the labors of both spouses combine to produce all marital property, and thus each spouse is the immediate half-owner of all such property. *Succession of Wiener, supra,* 203 La. at 665–666, 14 So. 2d at 480. See *de Funiak* 166–167.

Under this system, management of the community is entrusted to the husband. In general, he has exclusive authority to deal with and dispose of the community property, as long as he does so for the benefit of the

[8] In *Messersmith* v. *Messersmith*, 299 La. 495, 507, 86 So. 2d 169, 173, the court again emphasized:

> There is nothing more fundamental in our law than the rule of property which declares that this community is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired.

Accord, *Gebbia* v. *City of New Orleans*, 249 La. 409, 415–416, 187 So. 2d 423, 425.

marital partnership. Article 2404, Louisiana Civil Code (Appendix, *infra*, p. 26).[9] But these management powers do not—and indeed by state law could not—defeat the wife's ownership rights. *Succession of Wiener, supra*, 203 La. at 667–668, 14 So. 2d at 481. Rather, the husband's rights as manager of the community are vested in him, not because he is the sole owner, but because by state law he is named the agent of the community, through whom the community must act. The husband is merely the manager of the marital partnership, as explained in *Succession of Wiener, supra*, 203 La. at 669, 14 So. 2d at 481–482:

> It is obvious, therefore, that the wife's interest in the community property in Louisiana does not spring from any fiction of the law or from any gift or act of generosity on the part of her husband but, instead, from an express legal contract of partnership entered into at the time of marriage. There is no substantial difference between her interest therein and the interest of an ordinary member of a limited or ordinary partnership, the control and management of whose affairs has, by agreement, been entrusted to a managing partner. The only real difference is that the limitations placed on the managing partner in the community partnership are fixed by law, while those placed on the managing partner in an ordinary or limited partnership are fixed by convention or contract. * * *

Louisiana law provides further protections for the wife, in view of her passive role with respect to the man-

[9] Under Spanish law the husband was the exclusive manager of all community affairs. To a greater or lesser degree, he retains that position in all of the community property states. See *de Funiak* 322–326.

agement of the community, by shielding her from the marital creditors. Community debts must be satisfied from community property, Article 2403, Louisiana Civil Code (Appendix, *infra,* p. 26), and the wife's separate estate cannot ordinarily be reached.[10] See *Ward* v. *Trimble*, 20 So. 2d 765 (La. C.A., 2d Cir.). Upon dissolution of the community, the wife may retain her protected status. If she is willing to renounce her interest in the community, she is not responsible for any community debts, although perforce she does not share in the community's assets. Article 2410, Louisiana Civil Code (Appendix, *infra,* p. 26). This privilege, too, had its genesis in the Spanish system, and while, as a matter of state policy, it does affect the state-defiined rights of

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[10] In every community property state, the wife generally is not personally liable (in the sense that her separate property is exempted) for the community debts. See:

Arizona: Ariz. Rev. Stat. Ann., § 25–214(B); *Fox* v. *Weissbach*, 76 Ariz. 91, 259 P. 2d 258.

California: Civil Code, West's Ann. Calif. Codes, § 5121; *Grolemund* v. *Cafferata*, 17 Cal. 2d 679, 111 P. 2d 641.

Idaho: Idaho Code, § 32–911; *Dernham & Kaufmann* v. *Rowley*, 4 Idaho 753, 44 Pac. 643.

Nevada: Nev. Rev. Stat., § 123.210.

New Mexico: N.M. Stat. 1953, Ann., § 57–3–9; *E. Rosenwald & Son* v. *Baca*, 28 N.M. 276, 210 Pac. 1068.

Texas: Family Code, Vernon's Tex. Codes Ann., § 5.61; *Austin* v. *Strong*, 117 Tex. 263, 1 S.W. 2d 872, rehearing denied, 3 S.W. 2d 425.

Washington: Rev. Code of Wash. Ann., § 26.16.020; *Cunningham* v. *Zane*, 139 Wash. 176, 245 Pac. 913.

This rule follows from the Spanish law, under which only the contracting spouse—who generally could only be the husband, as community manager—was personally liable for the community debts. *de Funiak* 447. That is the law of Louisiana. See *Poindexter* v. *Louisiana & A. Ry.*, 170 La. 521, 128 So. 297; *Breaux* v. *Decuir*, 49 So. 2d 495 (La. C.A., 1st Cir.).

creditors *vis-à-vis* the wife, it does not alter the wife's vested ownership interest in the community.[11] Instead, it merely provides an opportunity for her to forego the benefits, and thus avoid some of the burdens, that would otherwise attach to that ownership.

Clearly, then, under Louisiana law the wife is the owner of one-half of all community property immediately upon its acquisition. To be sure, that ownership is subjected to the managerial powers of the husband (whose rights are circumscribed by state law) and protected from the claims of community creditors, both of which are matters of state policy. But the fact remains that the wife's ownership exists from the very moment community property is acquired, and her interest in such property is equal and equivalent to that of her husband. That was the whole basis of the decisions in *Poe* v. *Seaborn, supra,* and *Bender* v. *Pfaff, supra.*

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[11] See *de Funiak* 620–628. De Funiak observes (*id.* at 621):

> This right of the wife to renounce or repudiate must not be misconstrued as an indication that she had never owned and possessed her share, for the fact was not denied; but she did have, under the principles of community property, the right to revoke her ownership and possession.

Brassac v. *Ducros*, 4 Rob. La. 335, on which the court below relied (R. 78), must be read in this light. Thus the statement in *Brassac* that if the wife renounces, the community is, as to her, as though it never existed, is, in context, correct. There, the claimant asserted that the wife was, under state law, bound by certain acts of her husband, notwithstanding her subsequent renunciation. The court rejected this claim. As a matter of state law on the question before it, the court's declaration was proper. But, as we show below (*infra*, pp. 20–21), provisions of state law do not control the collection of federal income taxes.

3. FEDERAL LAW TAXES THE WIFE ON THE ONE-HALF SHARE OF COMMUNITY INCOME WHICH, UNDER LOUISIANA LAW, SHE OWNS

While state law creates legal interests, the federal statutes determine when and how they shall be taxed.[12] Louisiana law prescribes the legal interests of the wife with respect to community property, including income. As seen, that law declares that the wife has a present, vested interest in all community property, equal to that of her husband and amounting to ownership. The question remaining is whether the federal law levies a tax against the wife upon her share of the community income. That question was before this Court in *Poe* v. *Seaborn, supra,* and its companion cases, and the answer is clear: the wife, as owner of the income, is taxed on it.

Seaborn involved the determination of the proper federal taxes payable by a husband and wife residing in the community property state of Washington.[13] Seaborn refused to report the entire amount of community income

[12] *Morgan* v. *Commissioner, supra,* 309 U.S. at 80–81; *Burnet* v. *Harmel, supra,* 287 U.S. at 110.

[13] This was one of five cases instituted by the government to determine whether, under the Revenue Acts of 1926 and 1928, married taxpayers in the states of Washington, Arizona, Texas, Louisiana and California were entitled to split the community income equally for income tax purposes. *Poe* v. *Seaborn*, 282 U.S. 101 (Washington); *Goodell* v. *Koch*, 282 U.S. 118 (Arizona); *Hopkins* v. *Bacon*, 282 U.S. 122 (Texas); *Bender* v. *Pfaff*, 282 U.S. 127 (Louisiana); and *United States* v. *Malcolm*, 282 U.S. 792 (California). The decisions in these cases confirmed the right of married taxpayers in community property states to divide the community income equally between them and to report their respective shares of such income in separate returns. The consequence was the amendment of the tax laws in 1948 to make "split incomes" available to all married taxpayers, in order to avoid discrimination.

in his return. Instead, he and his wife made separate tax returns, each reporting one-half of the community income, on the theory that each owned, and was taxable on, his or her one-half share. As noted earlier, the Court first ruled that the statutory predecessor of Section 1(a) of the Code, imposing the federal income tax on the income "of every individual," levies the tax against the owner of the income. It then considered in detail the provisions of Washington law defining the rights and obligations of the spouses, and held (282 U.S. at 111): "it is clear the wife has, in Washington, a vested property right in the community property, equal with that of her husband; and in the income of the community, including salaries or wages of either husband or wife or both." Since the federal tax is against the owner, and since husband and wife each owned one-half of the community income, the Court sustained the separate reporting of equal parts of the total community income by Mr. and Mrs. Seaborn.

In the case on this question from Louisiana, *Bender v. Pfaff*, 282 U.S. 127, the Court likewise found that the wife had a present vested interest in her share of the community income, and accordingly upheld the right of the spouses to divide the community income in separate tax returns. The Court's analysis of Louisiana law coincides with that made above, pages 9–13; and its opinion includes the following significant observations concerning the Louisiana community property system (282 U.S. at 131–132):

> If the test [for federal tax purposes] be, as we have held it is, ownership of the community income, this case is probably the strongest of those presented to us, in favor of the wife's ownership of one-half of that income. * * * The statutes

> speak of a marriage superinducing as a matter of right, [a] "partnership or community" of acquêts or gains. Repeatedly the statutes refer to the relationship as a "partnership or community." The decisions of the Supreme Court of Louisiana clearly recognize the wife's ownership of one-half of all the community income. * * *
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> * * * * *
>
> While the husband is the manager of the affairs of the marital partnership, the limitations upon the wrongful exercise of his power over community property are more stringent than in many states which have a community system. * * *
>
> * * * * *
>
> Inasmuch, therefore, as, in Louisiana, the wife has a present vested interest in community property equal to that of her husband, we hold that the spouses are entitled to file separate returns * * *.

This does not mean, as the court below concluded (R. 79), that the wife may refuse to return her one-half share of community income when she does not choose, under state law, to assume personal liability for community indebtedness. Once it is determined that the wife owns such income, rules of state law regarding her personal responsibility for the debts of the community are irrelevant. As the owner of the income, she is taxable on it and must report it.

This is the necessary import of *United States* v. *Malcolm*, 282 U.S. 792. There, the Ninth Circuit certified to the Court two questions (282 U.S. at 793–794):

> "1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in Cali-

fornia be returned and the income tax thereon be paid by the husband?

"2. Has the wife under § 161(a) of the Civil Code of California such an interest in the community income that she *should* separately report and pay tax on one-half of such income?" [Emphasis supplied.]

On the authority of *Seaborn* and its companion cases, the Court answered the first question "No" and the second question "Yes." In every case since this ruling—until the Fifth Circuit's decisions here—the courts have uniformly interpreted *Malcolm* as establishing that the wife not only is entitled, but is *required,* to return one-half of the community income, either in her own separate return or by filing a joint return with her husband. See, *e.g., Commissioner* v. *Cavanagh,* 125 F. 2d 366 (C.A. 9), affirming 42 B.T.A. 1037;[14] *Van Antwerp* v. *United States,* 92 F. 2d 871 (C.A. 9); *Simmons* v. *Cullen,* 197 F. Supp. 179 (N.D. Cal.); *Gilmore* v. *United States,* 290 F. 2d 942 (Ct. Cl.), reversed on other

[14] The Board of Tax Appeals' discussion in the *Cavanagh* case of the impact of *Malcolm* is enlightening (42 B.T.A. at 1044):

> * * * income must be reported [for federal income tax purposes] by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to present possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra.*
>
> Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so it follows that the petitioner is taxable only on the other half of the entire community property. * * *

Accord, *Hunt* v. *Commissioner* 22 T.C. 228, 230. See also *Commissioner* v. *Harmon,* 323 U.S. 44, 50–51 (Douglas, J. dissenting.)

grounds, 372 U.S. 39; *Kimes* v. *Commissioner*, 55 T.C. No. 81 (decided February 22, 1971); *Hill* v. *Commissioner*, 32 T.C. 254; *Hunt* v. *Commissioner*, 22 T.C. 228. And the Fifth Circuit seemed to follow this rule before its decisions in the present cases. See *Commissioner* v. *Hyman*, 135 F. 2d 49 (C.A. 5); *Saenger* v. *Commissioner*, 69 F. 2d 633 (C.A. 5); *Smith* v. *Donnelly*, 65 F. Supp. 415 (E.D. La.); cf. *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (C.A. 5).[15]

In sum, the holdings of the Fifth Circuit in the present cases are at odds with this Court's conclusion in *Seaborn* and its companion cases that the wife is the owner of her one-half share of community income. In effect, the court below has held that the wife's "ownership" is so qualified by the husband's broad managerial powers and by the state statutes exempting her generally from personal liability for community debts that she is not individually responsible for taxes on her share of community income unless she agrees otherwise. But arguments based on precisely the same features of state

[15] *Malcolm* involved California community property law, while the instant cases arose in Louisiana. But plainly the reach of the *Malcolm* rule is not restricted to the California system, as even the Fifth Court has, until now, apparently recognized. And the rationale of the court below is patently at odds with *Malcolm*. Its ruling is grounded on the fact that in Louisiana only the husband is personally liable for community debts. Essentially the same situation prevails in California (see note 10, *supra*), and thus, in our view, *Malcolm* must be overruled if the decisions below are permitted to stand. The Tax Court, however, recently distinguished *Mitchell* as turning on "the peculiarities of Louisiana law" and refused to follow it in a California community property situation. *Kimes* v. *Commissioner*, 55 T.C. No. 81, slip op. at 17, note 7 (decided February 22, 1971).

law were advanced in the *Seaborn* and related cases,[16] and rejected by this Court. Indeed, in the Louisiana case, the Court concluded (*Bender* v. *Pfaff, supra,* 282 U.S. at 132), that despite these features of local law "the wife has a present vested interest in community property equal to that of her husband." It follows, since the wife owns her share, that under the terms of the federal taxing statute (Section 1(a) of the Code) she is liable for the tax levied on her income.[17]

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[16] It was on these grounds that the government argued in the *Seaborn* group of cases that the wife could not separately return her share of the community income, but instead the husband had to report the entire community income in his return. See Brief for the Collector, pp. 10–18, *Poe* v. *Seaborn, supra,* No. 15, O.T., 1930; Brief for the Collector, pp. 9–18, *Goodell* v. *Koch, supra,* No. 106, O.T., 1930; Brief for the Petitioner, pp. 10–18, *Hopkins* v. *Bacon, supra,* No. 84, O.T., 1930; Brief for the Petitioner, pp. 10–18, *Bender* v. *Pfaff, supra,* No. 86, O.T., 1930. In *Seaborn* the Court explicitly rejected the government's contention that the husband's managerial authority made the wife's interest in the community income less than "ownership", and held that while under Washington law, as in other community property jurisdictions, the husband had broad powers of management, to the exclusion of the wife, he could exercise such powers only as the agent and on behalf of the community (282 U.S. at 111–113). Without discussion, the Court did likewise in *Bender* v. *Pfaff, supra,* the Louisiana case, where the government also relied on the provisions of Louisiana law exempting the wife from personal liability for community obligations, including Section 2410 of the Louisiana Civil Code, which permits the wife to renounce her community interest. See Brief for the Petitioner, *Bender* v. *Pfaff, supra,* pp. 37–38.

[17] Only recently, Congress recognized the fundamental premise on which the decisions in the *Seaborn* test cases rest—that the wife in community property states owns one-half of all community income. See Act of January 12, 1971, P.L. 91–679, 84 Stat. 2063, amending Sections 6013 and 6653 of the Code. Section 6013(e)

4. LOUISIANA LAW EXEMPTING THE WIFE'S SEPARATE PROPERTY FROM COMMUNITY OBLIGATIONS DOES NOT BAR COLLECTION FROM SUCH PROPERTY OF THE FEDERAL TAXES SHE OWES

Sections 6321 and 6331(a) of the Code (Appendix, *infra*, p. 25) provide that the United States may collect the taxes due it from "all property and rights to property" belonging to the person liable therefor. The only property exempt from levy is enumerated in Section 6334(a), and Section 6334(c) provides that "[n]otwithstanding any other law of the United States, no property or rights to property shall be exempt from levy * * *" other than that specified in Section 6334(a).[18] The language of the statutes is unmistakable. There is no exemption for separately owned property. Moreover, the pertinent Treasury Regulations, Section 301.6334-1(c), provide that:

> No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

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(2)(A), as amended, specifically suspends, in the limited circumstances to which it applies, the rule by which one spouse is, under state community property rules, the one-half owner of income resulting from the activities of the other spouse. The new law does not apply to any case in which the spouses do not file a joint return.

[18] Because it was already established that "[p]rovisions of State law cannot grant an exemption from levy," the statute speaks only of other *federal* laws. S. Rep. No. 1622, 83d Cong., 2d Sess. 578 (1954).

In accordance with these statutes and regulations, it has heretofore uniformly been held that state exoneration provisions cannot defeat the right of the United States to collect the tax from the person owing it. *Aquilino* v. *United States,* 363 U.S. 509, 513–514; *United States* v. *Bess,* 357 U.S. 51, 56–57; *United States* v. *Heffron,* 158 F.2d 657 (C.A. 9), certiorari denied, 331 U.S. 831; *United States* v. *Dallas Nat'l Bank,* 152 F.2d 582, 585 (C.A. 5); *Shambaugh* v. *Scofield,* 132 F.2d 345, 346 (C.A. 5). As recently as last year, the Ninth Circuit ruled that Washington and Arizona laws exempting the husband's interest in community property from his premarital debts could not defeat collection of his premarital federal income tax liability from his interest in the community. *United States* v. *Overman,* 424 F.2d 1142; *In re Ackerman,* 424 F.2d 1148. In short, just as the exoneration provisions of community property law do not impair the basic ownership interest of the wife, they likewise do not bar collection by the United States, out of a wife's separate property, of taxes which she owes.

The court below held to the contrary essentially on the ground that the tax on community income is a community debt and that, as a community obligation, it "does not become her separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution" (R. 127).[19] In the court's view, in the absence of such

[19] In its *Angello* opinion, the Fifth Circuit made clear (R. 127) that a wife need not formally renounce her interest under Article 2410 in order to avoid federal tax liability (see note 4, *supra*). She may do so if state law exonerates her separate prop-

acceptance, only the community, as an entity, or the husband, as its manager, is liable for the tax.

But the marital community is not a separate taxpaying entity under the Internal Revenue Code and has never been recognized as such. Rather, as we have shown, the marital partners individually own and are taxed on their shares of community income, and thus are individually liable for the tax on their shares.[20] In this respect, the marital partnership in a community property state is no different than an ordinary partnership, which is not a taxpaying entity under the Code, and each of whose partners is individually responsible for the taxes on his share of the partnership income. See Section 701 of the Code. A partner's liability for tax on his share of partnership income would not be terminated by his renouncing the income or giving away his partnership interest. There is no greater reason for terminating an existing liability here.

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erty from community obligations and she does not accept individual responsibility for those obligations. The court has since confirmed this in *Ramos* v. *Commissioner*, 429 F. 2d 487, where it relieved a Texas wife of personal liability even though there is no renunciation provision in Texas law.

[20] Of course, this does not preclude the wife from seeking reimbursement from her husband for the amount of taxes on community income which she pays with her separate funds. For state law purposes, it may well be that federal taxes on community income are a community debt, for which the husband is principally responsible. See *Messersmith* v. *Messersmith*, *supra*, 229 La. at 516–517, 86 So. 2d at 176. But this cannot affect the wife's liability to pay federal taxes on her share of the income. Cf. *Kimes* v. *Commissioner*, *supra*, slip op. at 14–15, notes 3–4.

Nor do we believe that the tax on the wife's share of community income could be collected from the husband as manager of the community. The *Malcolm* case established that, at least in California, the husband is not required to report and pay tax on the entire community income, but only on the one-half that he owns personally. See *Van Antwerp* v. *United States, supra;* see also, *Gilmore* v. *United States, supra; Commissioner* v. *Cavanagh, supra.* The same result would follow in Louisiana, since the federal collection laws control there, as well as in California. Thus, under the decision below, if the wife fails to file a joint or separate return, and does not accept the liabilities or benefits of the community on its dissolution, her one half of the community income would apparently escape taxation.

Indeed, under that decision, the owner of the income (the wife), though the tax is *computed* on the basis that it is her income, may avoid *liability* for the tax on that income by actions taken long after the close of the taxable year in which the income is received. This would be unique in the tax laws. Moreover, a husband reporting half of the community income on his tax return might later find that he was liable for the tax on all of it. By the time of the subsequent events it might be too late for the government to proceed against the husband for further tax. Such uncertainties and such divergence of treatment are wholly inconsistent with the purpose of Congress to enact laws which would "give a uniform application to a nationwide scheme of taxation." *Burnet* v. *Harmel, supra,* 287 U.S. at 110; compare *United States* v. *Davis,* 370 U.S. 65, 70–71.

It is clear that the effect of *Poe* v. *Seaborn* and the related cases, particularly when followed by the "split

income" provisions of 1948, was to establish a nationwide scheme of taxation on a uniform basis. It is equally clear that the decision below destroys that uniformity on a local basis. The decision is contrary to the words of Section 1(a) of the Code, as those words were construed in *Poe* v. *Seaborn, supra,* and in *Bender* v. *Pfaff, supra.* It introduces an unwarranted complexity into a field where this Court's decisions, and the subsequent enactments of Congress, have gone far to eliminate complexity and to establish effective uniformity. The development represented by the decision below is highly undesirable, and is unwarranted by any words in the statute or by doctrine.

CONCLUSION

For the reasons stated, the judgments of the court of appeals should be reversed, and the cases remanded to that court.

Respectfully submitted.

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APPENDIX

Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.):

SEC. 1. TAX IMPOSED.

(a) *Rates of tax on individuals.*—A tax is hereby imposed for each taxable year on the taxable income of every individual * * *.

* * * * *

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

* * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * *

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West's La. Stat. Ann., Civil Code:

Art. 2399. *Community of property by operation of law*

Art. 2399. Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary.

* * * * *

Art. 2403. *Debts falling into community*

Art. 2403. In the same manner, the debts contracted during the marriage enter into the partnership or community of gains, and must be aquitted out of the common fund, whilst the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

Art. 2404. *Rights and restrictions of husbands as master of community*

Art. 2404. The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife.

* * * * *

Art. 2410. *Exoneration of wife or heirs by renunciation of community*

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

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